

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5021 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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THAKORE KHUSHALJI RAVAJI

Versus

STATE OF GUJARAT

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Appearance:

MR TS NANAVATI for Petitioner

MR. NIGAM SHUKLA, Addl. G.P. for respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 22/10/96

ORAL JUDGEMENT

Mr. Nanavati, learned Advocate, for the petitioner. Mr. Nigam Shukla, learned Addl. Government Pleader for the respondents. This Special Civil Application is directed against the detention order dated 20.4.1996 passed by the District Magistrate, Gandhinagar, detaining the petitioner under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. The detention order was executed on the same date i.e.

on 20.4.1996 and since then the petitioner is under detention lodged at Kutch Bhuj Special Jail, District Kutch-Bhuj.

2. This Special Civil Application was filed on 11.7.1996 and on 12.7.1996 rule returnable for 19.8.1996 was issued. So far neither any reply has been filed nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that about 28 criminal cases were registered against the petitioner under the Prohibition Act. Out of which certain cases pending trial before the court and in certain cases the police investigation was going on. Besides this, the detaining authority has taken into consideration the statements of as many as 6 witnesses who had deposed against the petitioner's anti-social activities and he is engaged in the business of unauthorised liquor. The detaining authority has found that the petitioner was a bootlegger, was a headstrong person and was otherwise involved in criminal activities and the witnesses who did not cooperate with the petitioner in his unauthorised business are subjected to harassment and beating by the petitioner. He has created an atmosphere of terror and fear among the witnesses and become a problem to the public order in the concerned area.

4. The detention order has been challenged on number of grounds but at the time of argument, the learned counsel for the petitioner has kept his arguments confined to the question of delay in passing the detention order. He has submitted that the statements of the witnesses were recorded on 25.1.1995 whereas the detention order has been passed on 20.4.1996. It has been further submitted that even if the date of last criminal case which is registered against the petitioner is taken into consideration i.e. 24.12.1995, there is an inordinate delay in passing the detention order which has not been explained.

5. I find that no reply has been filed and the delay between the date of recording of the statements of the witnesses i.e. on 25.1.1995 and the date of passing of the order i.e. on 20.4.1996 has not at all been explained. Even the delay between the date of the registration of the last offence dated 24.12.1995 and the date of detention order i.e. 20.4.1996 has not been explained. Thus, the delay for a period of more than one year from the date on which the statements were recorded and the delay of more than 3 months between the date of

the registration of the last offence and the date of detention order remained unexplained. On this ground alone, the detention order cannot be sustained in the eye of law and deserves to be quashed and set aside.

6. Accordingly, this Special Civil Application is allowed. The impugned detention order dated 20.4.1996 passed by the District Magistrate, Gandhinagar, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty, if not required in any other case. Rule is made absolute.

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